

# The Protection of Forests in the European Union

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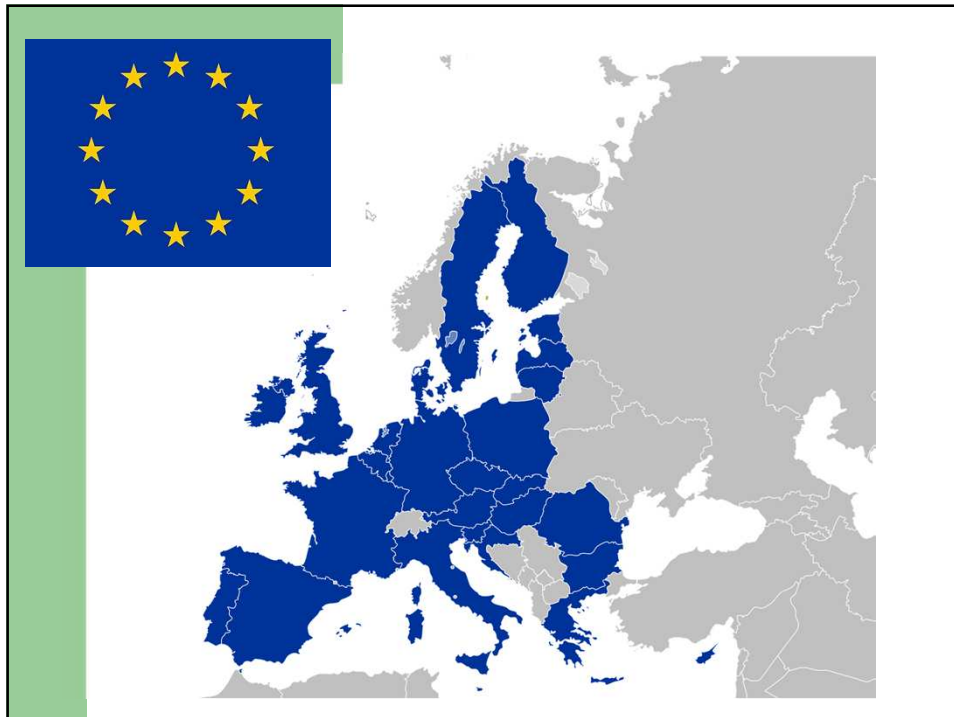


## The European Union

- 1957 (EEC) - Belgium, France, Germany, Italy, Luxembourg, The Netherlands
- 1973 - Denmark, Ireland, United Kingdom
- 1981 - Greece
- 1986 - Portugal, Spain
- 1995 - Austria, Finland, Sweden
- 2004 - Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia
- 2007 – Romania, Bulgaria
- 2013 – Croatia
- ? March 2019 UK Brexit ?

## The European Union

- 28 member states
- 508 million people
- 24 official languages
- candidate members: Turkey, Serbia, Montenegro, Macedonia, Albania
- potential candidate members: Bosnia and Herzegovina, Kosovo
- crucial influence on environmental policy and law of the Member States



## Legal basis for environmental law

- Objectives
  - Art. 2 TEU “The Union [...] shall work for the **sustainable development** of Europe [...] aiming at [...] a **high level of protection and improvement of the quality of the environment** [...]”
- Charter of Fundamental Rights of the EU
  - Art. 37 Environmental protection
 

“A high level of environmental protection and the improvement of the quality of the environment **must be integrated** into the policies of the Union and ensured in accordance with the **principle of sustainable development**.”

## Environmental policy and the internal market

- Art. 110 TFEU - harmonisation national legislation with view to establish internal market
- Qualified Majority in the Council, co-decision with European Parliament
- Environmental Matters:
  - “high level of protection, taking account in particular of any new development based on scientific facts”

## Environmental policy and the internal market

- Full harmonisation
- Exceptions
  - maintain existing stricter national measures on environmental grounds
  - introducing new stricter national measures
    - based on new scientific evidence
    - protection of the environment
    - problem specific to a Member State
  - examination by the Commission (approve or reject)

## Environmental policy and the internal market

- Direct access to ECJ in case of improper use of derogations
- Approximately 1/3 of European Environmental Measures based on internal market provision
  - Product Standards and Trade Related Matters

## Common Environmental Policy

- Articles 191- 193 TFEU

- Objectives :
- preserving, protecting and improving the quality of the environment
  - protecting human health
  - prudent and rational utilisation of natural resources
  - promoting measures at international level and in particular combating climate change.

## Common Environmental Policy

- High level of protection taking into account diversity of situations in various regions
- Based on
  - precautionary principle
  - prevention principle
  - prevention at source
  - polluter pays principle
- Take account of
  - available scientific and technical data

## Common Environmental Policy

- environmental conditions in different regions
- potential benefits and costs
- economic and social development
- International co-operation
- Decision-making
  - Qualified Majority Council in co-decision with European Parliament

## Common Environmental Policy

- Exceptions (Unanimity - Consultation of European Parliament)
  - fiscal measures
  - town and country planning, quantitative management of water resources, land use
  - choice between energy resources - energy supply

## Common Environmental Policy

- Minimum measures - Introduction of more stringent measures
- 2/3 of environmental legislation
- Instruments:
  - Regulation
  - Directive
  - Decision
  - Recommendation

## European Environmental Legislation

- [General provisions and programmes 121](#)
- [Pollution and nuisances](#)
  - Nuclear safety and radioactive waste [73](#)
  - Water protection and management [51](#)
  - Monitoring of atmospheric pollution [178](#)
  - Prevention of noise pollution [12](#)
  - Chemicals, industrial risk and biotechnology [106](#)
- [Space, environment and natural resources](#)
  - Management and efficient use of space, the environment and natural resources [11](#)
  - Conservation of wild fauna and flora [44](#)
  - Waste management and clean technology [62](#)
- [International cooperation 76](#)

## European Court of Justice



## European Court of Justice

- Failures of member states to fulfil European obligations
  - Violation of Treaty provisions
  - Lack of implementation of Directives
  - First Condemnation
  - Non compliance - Second Condemnation + lump sum or penalty payment
- Preliminary rulings on questions raised by national judges on the validity and the interpretation of European law



## European Court of Justice

- Around 10 % environmental cases
- Crucial role in giving practical effect to European environmental law
  - ADBU -case: environmental protection = mandatory requirement that may justify trade restricting measures in absence of full harmonisation rules
  - General doctrines: enforcement of regulations, transposition and practical application of directives, direct effect of directives, interpretation in accordance with directives

## EU Forests

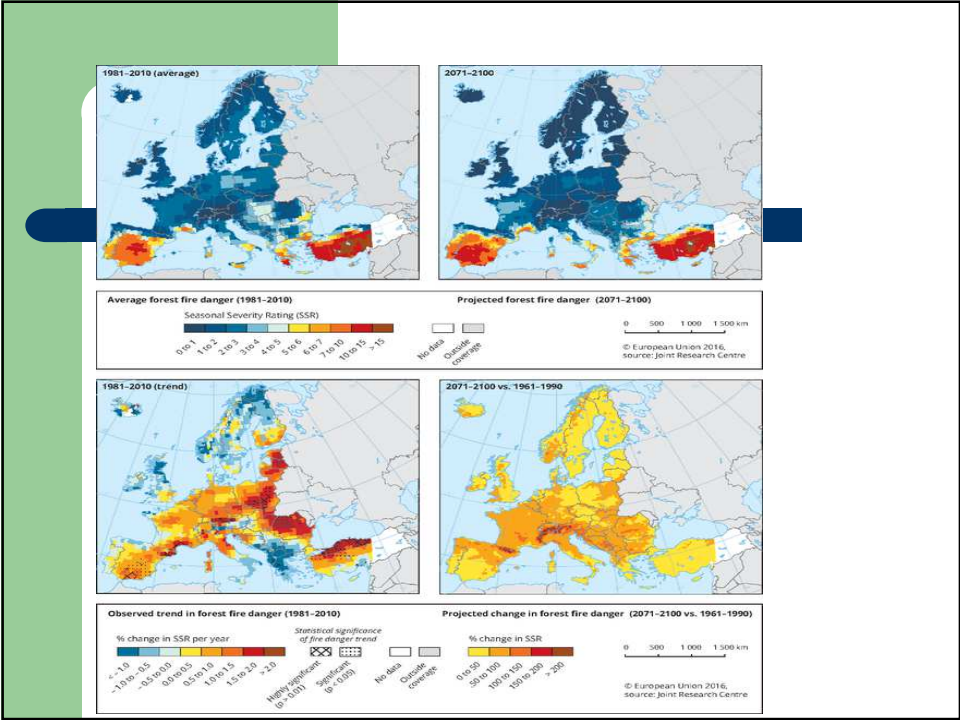
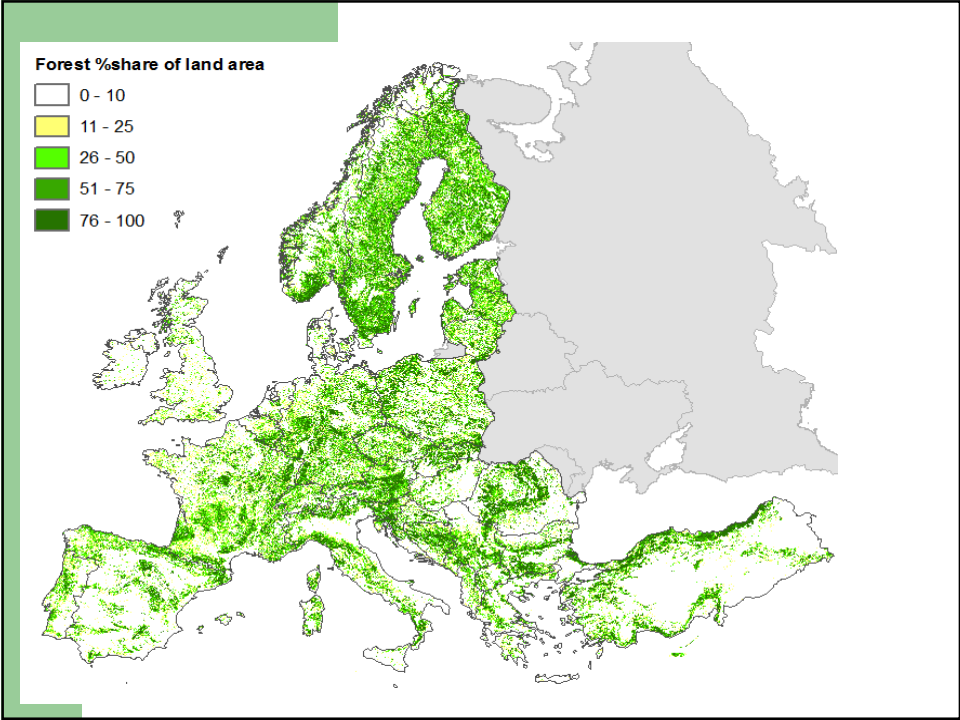
- In the past more than 80 % of Europe's Land surface
- Half of it disappeared in the 19<sup>th</sup> century
- Now – 43 % of land surface
- Surface has increased with 10 % in last 25 years (but decrease in some MS)
- Huge difference between MS (Malta close to 0 %, Finland over 70 %)

## EU Forests

- Great diversity of forest habitats (81 different habitat types identified)
- Forestry mainly based on native tree species
- Only 26 % of forest species and 15 % of forest habitats under Habitat Directive are in a “favourable conservation status”
- 27 % of mammals, 10 % of reptiles and 8 % of amphibians under threat of extinction

## EU Forests

- Pressure from fragmentation, expanding urban areas, climate change and loss of biodiversity
- 95 % of forest are under management (10 % intensive plantations)
- Only 3 % undisturbed by man
- Sustainable forest management is widely practiced, but can still be improved
- 40 % public; 60 % private



## EU Legislation

- Comprehensive EU Forest legislation is lacking
- Some regional instruments (Alpine and Carpathian Conventions) contain specific protection measures for forests
- Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market - “Timber Regulation”

## EU Legislation

- Timber Regulation
  - Prohibits the placing on the EU market for the first time of illegally harvested timber and products derived from such timber;
  - Requires EU traders who place timber products on the EU market for the first time to exercise 'due diligence';
  - Have to keep records of their suppliers and customers.

## EU Legislation

- EU CITES Regulation (Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein)
  - Appendix I Species may in principle not be traded (*Araucaria araucana*, *Dalbergia nigra*)
  - Appendix II Species may only be traded according the applicable protective regulations (*Pericopsis elata*, *Caryocar costaricense*...)
- Proposal for a Regulation of the EP and the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework
  - to integrate greenhouse gas emissions and removals from land use, land use-change and forestry (LULUCF) into the 2030 climate and energy framework

## EU Legislation

- Habitats Directive (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora)
  - Network of protected areas, to protect Europe's most valuable and threatened species and habitats:
  - Natura 2000: 18 % of land territory
  - **Annex II species** (about 900): core areas of their habitat are designated as sites of Community importance (SCIs) and included in the Natura 2000 network; these sites must be managed in accordance with the ecological needs of the species.
  - **Annex IV species** (over 400, including many annex II species): a strict protection regime must be applied across their entire natural range within the EU, both within and outside Natura 2000 sites

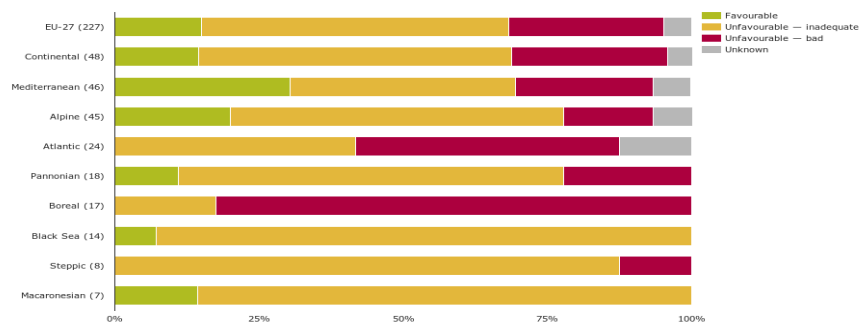
## EU Legislation

<http://natura2000.eea.europa.eu/#>

- Protected forest areas account for:
  - More than 45% of the Natura 2000 protected areas, 31.3% of the national designated protected areas, and about 12% of the total forest area.
  - Despite the efforts to halt loss of biodiversity, 80% of forest habitat assessments still have unfavourable conservation status (see Figure next slide).

## EU Legislation

Chart



European Environment Agency

## European Commission takes Poland to ECJ to stop logging in Białowieża



The Białowieża forest boasts unique plant and animal life -- including the continent's largest mammal, the European bison, as well as one of the largest surviving parts of the primeval forest that covered the European plain 10,000 years ago

## Court of Justice of the European Union

Order of the Vice-President of the Court, 27 July 2017,  
Case C-441/17 R, European Commission v. Poland

"The Republic of Poland, except in the case of a threat to public security, shall cease immediately and until the order for termination of the present interim relief proceedings is pronounced,

- active forest management operations in [...] alluvial forests with willows, poplars, alders and ash trees - and in the forest habitats of the habitat 9170 - oak and sub-continental chammacies, as well as in the habitats of White-backed Woodpecker, Three-Toed Woodpecker, Crayfish, Tengmalm's Owl, Apivore Bird, Lesser Pheasantfish, Collar Flycatcher and Columbian Pigeon and in Saproxylis Coleoptera Habitats - Cucujus vermillion, Boros schneideri, red-necked phryganophilus, Pytho kolwensis, rhysode sulcatus (Rhysodes sulcatus) and the splendid bupreste (Buprestis splendens), and
- the removal of dead spruces and the felling of trees as part of the increase in the volume of timber harvested on the site PLC200004 Puszcza Białowieska (Poland)"

## National legislation

- Forest legislation as such remains for the time being a matter of the MS
- 28+ different legislations
- In Belgium: 3 different forest codes, 1 for each region
- Flemish Region: Forest Decree of 13 June 1990 (as amended)

## Flemish Region of Belgium

- Densely populated, urbanised and fragmented land use
- Only 11 % of the territory is forest
- Around 20 % damaged vegetation
- Surface and bio-diversity is slowly increasing
- Partly protected as nature reserve, *Natura 2000* area or landscape



## Basic Principles of Flemish Forest Code

- Forest = soil surfaces of which trees and woody bush vegetations are the main ingredient (no minimum surface)
- Different functions at the same time:
  - Economic: providing wood and wood products, not compromising survival (logging quantum determined for each public forest)
  - Social & Educational: accessibility for recreational and educational purposes
  - Scientific

## Basic Principles of Flemish Forest Code

- Ecological: promotion of native and endemic species, stimulation of self regulating processes, promotion of tree diversity...
- Protection of organisms
- Environmental protection: protection of water catchment areas, combatting erosion, regulation of flow rate water courses, climate mitigation, water purification, protection zone...

## Basic Principles of Flemish Forest Code

- Sustainable forest management to be promoted by “forest groups” in which public and/or private forest owners work together
- Agency for Forest and Nature keeps forest inventory
- Management plans should be drafted for each (group of) forest (s) in view of sustainable management
- Agency verifies the implementation of those plans
- Agency is in charge of management of public forests

## Basic Principles of Flemish Forest Code

- Lodging according approved management plans is permissible
- Other lodgings subject to permit of the Agency
- Other lodgings not allowed and considered to be an environmental crime (alternative administrative sanctions can be imposed)
- Deforestation in principle forbidden, but there are some exceptions – an integrated permit is needed

## Basic Principles of Flemish Forest Code

- Compensation in kind or through payment to the Public Forest Fund is needed
  - Payments are not sufficient to acquire land and to plant the trees
- Some of the forests are situated in areas that can be developed according to land use plans
  - Art. 90b of Forest Code (introduced in 2015): Flemish Government shall make a detailed inventory of the most vulnerable valuable forests
  - The inventory (map of most vulnerable forests) shall be submitted to a public inquiry
  - Forests mentioned in the final map may in principle not be deforested

## Map of most vulnerable valuable forests

- Start public inquiry: 16 May 2017
- 12000 ha
- A lot of commotion with landowners
- Minister President (without consultation of the environmental minister) decide to withdraw the map and stop the public inquiry on 22 May 2017
- A new map will be drafted

## Map of most vulnerable valuable forests

<http://deredactie.be/cm/vrtnieuws.english/Health%2Band%2BEnvironment/1.2983598>

### Bourgeois intervenes personally to withdraw controversial "forest map"



## Court cases

- The Essers Case
  - Plan of extension of a transport firm
  - Adjacent Forest is *Natura 2000* site
  - Need of proper assessment; permit only allowed
    - Overriding public interest
    - No alternative
    - Full compensation
  - Land Use Plan adopted in violation of those conditions
  - Permit delivered in violation of those conditions

## Court cases

- Council of State 4 July 2017:
  - Suspension of Land Use Plan
  - On demand of Nature Protection Organisations

Is the *Euplagia quadripunctaria* more important than employment ?

<https://www.hln.be/regio/genk/dwarsboomt-spaanse-vlag-uitbreiding-farmadivisie-essers~ac595336/>

